IN THE HIGH COURT OF BOMBAY AT GOA
****

WRIT PETITION NO. 193 OF 2004

1. Shri Joao Mariano
D'Souza Gorvel,
r/o House No. 380,
Arpora, Ximer, Bardez,
Goa, and

2. Shri Bartholumeo C.
D'Souza, r/o Igreja
Vaddo, Anjuna, Bardez,
Goa. ... Petitioners

Versus

1. The State of Goa,
through its Chief
Secretary, having his
office at Secretariat,
Panaji, Goa,

2. The Chief Electoral
Officer, having his
office at Altinho,
Panaji, Goa, and

3. Shri Arvind Vasant Bugde,
Administrator of Comunidades
of North Zone, Mapusa,
Bardez, Goa. ... Respondents.

Shri R. B. D'Sa, advocate for the petitioners.

Shri A.N.S. Nadkarni, Advocate General with Shri D. Lawande, Additional Government Advocate for respondent Nos. 1 and 2.

Respondent no.3 present in person.

CORAM : P. V. HARDAS &
D. G. KARNIK, JJ.

DATE : 20th April, 2004

ORAL ORDER (Per Hardas, J.)

This petition has been filed by the petitioners praying therein that by an appropriate writ, order or direction, this Court should restrain the respondent nos. 1

and 2 from assigning any election duty or work to respondent no.3. The petitioner has also prayed for issuance of writ of mandamus to direct respondent no.1 to make available the full time services/duties of respondent no.3 in the office of the Administrator of Comunidades of North Zone, Mapusa, Goa and comply with the provisions of Article 125 of the Legislative Diploma no. 2070 dated 15th April, 1961 (Code of Comunidades). The petitioners have also prayed for issuance of an appropriate writ, order, or direction for directing the respondents to make available by way of alternative arrangements for full time services of any competent person or official as Administrator of Comunidades, North Zone.

2. In order to appreciate and evaluate the submissions advanced on behalf of the petitioners, it is necessary to make a reference to few facts:

The petitioners claim to be the components/members of the Comunidade of Anjuna. The petitioners aver that the Comunidade of Anjuna is situated in North Goa and is an age old native institute commonly known as Village Community in India, which stands constituted/established by the original settlers of the locality of Anjuna. It is also averred by the petitioners that the Administrator of Comunidade stands assigned with various duties and functions and is a full time employee. Further paragraphs in the petition set out in detail the various duties and functions of the Administrator

and disastrous effect of the absence of the Administrator, even for a short while, has on the administration of the Comunidade. In that background, this petition is filed on the above referred prayers.

3. The grounds in support of the petition are:-

(i) The decision of the respondent nos.1 and 2 to assign any General Election work to the third respondent, who is the Administrator of the Comunidades of North Zone, is illegal, improper and without any authority of law;

(ii) The respondent no.3, who was originally a Government official, now stands deputed to the private service of the Comunidades of North Zone and is now in full time service for the purpose of carrying out various duties and intentions set out in the Code of Comunidades;

(iii) Respondent nos. 1 and 2 have no authority to cause the absence of services of respondent no.3, without making alternative arrangements;

(iv) As a result of the illegal assignment of election duties, the subordinate staff functioning in office of the Administrator of Comunidades, North Zone, is "found unchecked and uncontrolled" causing inconvenience and hardship to the members of the Comunidades; and

(v) The absence of respondent no.3 in the office of the Administrator of Comunidades of North Zone is causing gross prejudice to the Comunidade of Anjuna.

4. Shri Rohit Bras D'Sa, learned counsel appearing on behalf of the petitioners, has referred to Articles 641 to 644 of the Code of Comunidades. According to the learned counsel for the petitioners, these Articles deal with the remuneration which is paid to the Administrator and the same is paid from the coffers of the Comunidade. It is further urged before us by making detailed reference to the various other provisions in the Code of Comunidades, that the Administrator is an important functionary in the administration of the Comunidades and his absence even for a short while, causes immense inconvenience, hardship and encourages various illegal activities, such as encroachments on the Comunidade land. Shri D'Sa, learned counsel for the petitioners also referred to Article 371 of the Code of

Comunidades which empowers the Administrator to take action for offences of encroachment and trespass on the land. Shri Bras D'Sa, learned counsel for the petitioners, then referred to Article 120 of the Code of Comunidades. Article 120 of the Code of Comunidades reads as under:-

> **Art.120.** The Administrators of the Comunidades must have their residence in the capital of the respective taluka, and they are not allowed to remain absent from the same without the authorization of the Governor General."

By reference to Article 120 of the Code of Comunidades, it is urged by the learned counsel for the petitioners, that the Administrator of Comunidades must have his residence in the capital of the respective taluka and he is not allowed to remain absent from the same without authorization of the Governor General. Thus, it is submitted before us that since the Administrator of the Comunidades is an important functionary dealing with administration of Comunidades, he is mandated to reside in the capital of the respective taluka and is not allowed to remain absent from the same without proper authorization.

5. Shri Bras D'Sa, learned counsel for the petitioners, then referred to Article 121 of the Code of Comunidades which reads thus:-

> **Art.121.** The Administrators of the Comunidades shall be substituted during their

> absence and inability by the secretary of the respective administration and, during the absence or inability of the latter, by the Administrators of the taluka (Mamlatdar)."

On the basis of this, it is urged before us that the Government is under a statutory obligation to appoint a substitute in the event of absence and inability of the Administrator of Comunidades to function and the substitute is the Secretary of the respective administration. Article 121 further states that in case the Secretary is absent or unable to discharge his duties, he shall be substituted by the Administrator of the taluka (Mamlatdar).

6. Shri D'Sa, learned counsel for the petitioners, then referred to a letter dated 3rd April, 2004, which is at page 13 of the petition and is addressed to the Chief Electoral Officer. This letter, according to the learned counsel for the petitioners, sets out the various illegalities which are being committed during the absence of the Administrator. Similar is the situation in respect of another letter dated 6th April, 2004, at page 14. Incidentally, it may be stated that both these letters have been addressed by the Secretary and the petitioners are not signatories to these letters. A reference is made to the letter dated 6th April, 2004, addressed to the Administrator by the first petitioner. In paragraphs 1 and 2 of the said letter, the first petitioner has threatened the Administrator with initiation of various proceedings, including that of criminal prosecution and in paragraph 8 of the said letter, the Administrator is warned

that the first petitioner would initiate legal proceedings both civil and criminal because of unjustly permitting illegalities in the Comunidade of Anjuna.

7. In respect of the prayer Clause (a), we find that the petitioner has not joined the Election Commission as a party. Assigning of election duty is obviously made by the Election Commission and the Election Commission has not been joined as a party. Apart from the question whether such a writ can be issued by the Court, the prayer at prayer Clause (a) cannot be granted to the petitioners in the absence of the Election Commission being made a party to the present petition.

8. The learned Advocate General appearing on behalf of respondent nos. 1 and 2 has referred to Section 21 of the Representation of the People Act, 1951. In pursuance of this power, the Election Commission has appointed the third respondent, i.e. the Administrator of Comunidades as Returning Officer. The learned Advocate General has further stated that the salary which is paid to the third respondent is not paid from the coffers of the Comunidade, but is paid by the State Government. It is further urged before us by the learned Advocate General that the third respondent, i.e. the Administrator is not absent and unable to perform his duties. The third respondent has been attending the office and has been performing his duties in addition to the performance of

his duties as a Returning Officer.

9. The petitioners have harped principally on the obligation of the State Government to appoint a substitute. Accordingly, it is prayed that a writ of mandamus be issued. For the issuance of a writ of mandamus, it is a settled proposition of law that a demand in that behalf has to be made and only in the event the authorities to whom a demand is made have not complied with the said demand, that a writ for mandamus could be issued for directing the authorities to discharge their legal obligations. Reference in this behalf may be made to the judgment of the Supreme Court in the case of **State of Haryana & Anr. vs. Chanan Mal, etc.**, reported in AIR 1976 S.C. 1654. From a perusal of the documents which have been annexed to the petition, we find that the petitioners have not made any demand to the State Government for appointment of a substitute. In view of this, we are afraid that the petitioners are not entitled to any reliefs as prayed for in the petition.

10. According to us, this is an attempt on the part of the petitioners to thwart the election process, which has been initiated. An attempt is made by the petitioners to settle their private scores by filing of the present petition and the invocation of the writ jurisdiction of this Court. According to us the petition is devoid of any substance and, therefore, deserves to be dismissed in limine. Accordingly,

the Writ Petition is dismissed in limine with costs, which are quantified at Rs.5,000/- (rupees five thousand) per petitioner.

P. V. HARDAS, J.

D. G. KARNIK, J.

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